HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 823 OF 2006

BETWEEN

Ch. Srinivasa Rao

.....

Appellant

And

PRK Prasad & others

.....Respondents

Counsel for the Appellant : Shri D.V. Bhadram

Counsel for Respondent No.1 : Shri M.V. Durga Prasad Cooperation

Counsel for Respondent No.7 : Government Pleader for Cooperation

Dated: 07.08.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 19.06.2006

passed by the learned Single Judge in Writ Petition No. 10881 of 2004 whereby he appointed Shri N. Subba Rao, Advocate as Advocate-Commissioner to conduct general body meeting of Swamy Ayyappa Co-operative Housing Society Limited.

Shri D.V. Bhadram, learned counsel for the appellant submitted that what has been recorded in the order under challenge does not contain true reflection of the so-called consent given by the counsel representing the appellant herein and, therefore, the order under challenge is liable to be set aside more so because no amount of consent can cloth the Court with the jurisdiction to pass an order in violation of the statutory provisions.

In our opinion, the submission of the learned counsel, though appears attractive, cannot be accepted in view of the judgment of the Supreme Court in **State of Maharashtra v. Ramdas Shrinivas Nayak**[1]. In that case, the State of Maharashtra had questioned the correctness of the order passed by Bombay High Court on the basis of concession made by Attorney General. It was urged before the Supreme Court that the Attorney General could not have made concession in derogation of the constitutional provisions regarding the power of the Governor under Article 163 of the Constitution. While refusing to entertain the said submission, the Supreme Court observed as under:

> "..... We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Pubic Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in Somasundaran v. Subramanian, AIR 1926 PC 136). We are bound to

> accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

In view of the law laid down by the Supreme Court, the appeal is dismissed. However, liberty is given to the appellant to file appropriate application in the writ petition for review of the order under challenge.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.1693 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

07.08.2006

ksld/svs

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[1] AIR 1982 Supreme Court 1249